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THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM

TO: The Commission

FROM: P. Christopher Hughey
Acting General Counsel

BY: Kathleen Guith *KG*
Acting Associate General Counsel for Enforcement

Mark D. Shonkwiler *MS*
Assistant General Counsel

Kimberly D. [redacted] *KDN*
Staff Attorney

RE: Closure of MUR 5472 (Republican Victory Committee a/k/a Republican Victory 2004 Committee and Jody L. Novacek, in her official capacity as treasurer; Jody L. Novacek, in her personal capacity; BPO, Inc. and BPO Advantage LP)

ACTIONS RECOMMENDED

Close the file in MUR 5472 as to all respondents.

DISCUSSION

In any compliance matter in which a civil action is commenced, the Commission is required to make public the files in the underlying enforcement action no later than thirty days from the date on which the Commission notifies the complainant and respondent of the final disposition of the civil action. See 11 C.F.R. § 111.20(c). On March 6, 2009, the Commission filed a lawsuit in federal district court against Jody L. Novacek, Republican Victory Committee a/k/a Republican Victory 2004 Committee, BPO, Inc. and BPO Advantage, LP for violations of 2 U.S.C. §§ 441d(a), 441h(b)(1) and 441h(b)(2) (the "RVC litigation").

On April 14, 2010, the district court in the RVC litigation entered an order of final judgment. The district court held that 1) the defendant Novacek and Republican Victory Committee, Inc. ("RVC") knowingly and willfully violated 2 U.S.C. § 441h(b)(1) by

1 fraudulently misrepresenting themselves as acting for, or on behalf, of a political party
2 for the purpose of soliciting contributions; 2) Defendants BPO, Inc. and BPO Advantage,
3 LP knowingly and willfully violated 2 U.S.C. § 441h(b)(2) by participating in Novacek
4 and RVC's plan, scheme or design to fraudulently misrepresent themselves as acting for,
5 or on behalf, of a political party for the purpose of soliciting contributions; and
6 3) Novacek and RVC violated 2 U.S.C. § 441d(a) and (c) by failing to include on their
7 communications the required disclaimer information in the manner specified by the
8 statute. The district court awarded the Commission declaratory and injunctive relief, and
9 ordered the Defendants to pay a joint and several civil penalty in the amount of
10 \$47,414.15 for the violations of the fraudulent misrepresentation provisions of 2 U.S.C.
11 § 441h(b) and the disclaimer provisions in 2 U.S.C. § 441d. In addition, the district court
12 ordered that any contributions currently held by non-party Apex CoVantage, L.L.C. or its
13 agents that were obtained in the solicitation made for RVC shall be turned over to the
14 Commission for return to the contributors, if possible. If that was not possible, then any
15 checks were to be destroyed and any cash was to be paid over to the Republican Party.

16
17 On May 15, 2010, the defendants filed a notice of appeal to the Fifth Circuit. On
18 September 16, 2010, the Fifth Circuit affirmed the district court's judgment. All time
19 periods for further appeals by the Defendants, including a request for a writ of certiorari,
20 have expired. In addition, the Litigation Division has contacted Apex regarding the
21 contribution checks and they have agreed to turn over the approximately 500 remaining
22 checks to the Commission in compliance with the court's order so that we can attempt to
23 return them to the contributors. Apex is in the process of inventorying/copying the
24 contribution checks so that the originals can be provided to the Commission for return to
25 the contributors in compliance with the court order.

26
27 Accordingly, it appears that the RVC litigation has reached its final conclusion,
28 and there is nothing prohibiting the public release of the file in MUR 5472 once the
29 Commission approves the closing of the file as to all respondents and the notification
30 letters required by section 111.20(c) are sent.

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32 **RECOMMENDATIONS**

- 33
34 1. Close the file in MUR 5472 as to all respondents.
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36 2. Approve the appropriate letters.
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